SUPREME COURT, U. S.
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No. 71-219

In the Supreme Court of the United States

OCTOBER TERM, 1971

CHARLES VERNON HAWKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted, as a previously convicted felon, of transporting ammunition in interstate commerce, in violation of 15 U.S.C. (1964 ed.) 902(e). He was sentenced to imprisonment for three years. The court of appeals affirmed *per curiam* without opinion.

Petitioner here questions only the admissibility of the evidence to prove his prior conviction. This evidence consisted of a copy of the judgment of the

Circuit Court of Caldwell County, Missouri, June 19, 1950, in *State* v. *Charles Vernon Hawkins*, showing a grand larceny conviction, a copy of the mandate and opinion affirming said judgment,[1] copies of records of the Bureau of Criminal Identification, Missouri State Penitentiary, fingerprint records and commitment papers. The documents were all properly certified (Tr. 123-124, 131-132) and the fingerprint records were identical with fingerprints of petitioner taken after his arrest (Tr. 111-112, 139-142). By stipulation, the government agreed not to introduce photographs which were part of the penitentiary records (Tr. 123-124).

Petitioner's objection at trial that introduction of the records denied him his Sixth Amendment right to be confronted with the witnesses against him was properly overruled (Tr. 125-127, 130, 134). The validity of the statutes, 28 U.S.C. 1738 and 1739, under which certified copies of the Missouri court records were admitted, has long been established. *Atchison, T. & S.F. Ry. Co.* v. *Sowers*, 213 U.S. 55; *Metcalf* v. *Watertown*, 153 U.S. 671. There was neither denial of the right of confrontation nor of due process.[2]

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[1] See *State* v. *Hawkins*, 240 S.W. 2d 688 (Mo. Sup. Ct.).

[2] There is no conflict of circuits. *United States* v. *Burruss*, 418 F.2d 677 (C.A. 4), merely holds that the recordation of a third party statement in a business record does not make it admissible evidence under the Business Records Act.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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